

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the matter of:	)
	)
Harron Cablevision of Massachusetts d/b/a	)
Harron Communications Corp.	)
	)
Petition for Modification of the ADI of Television	)
Broadcast Station WNDS, Derry, New Hampshire	)
	)
Application for Review	)

**MEMORANDUM OPINION AND ORDER**

**Adopted: August 1, 2003**

**Released: August 6, 2003**

By the Commission:

**I. INTRODUCTION**

1. CTV Derry, Inc., licensee of television station WNDS (TV), Channel 50, Derry, New Hampshire ("WNDS"), has filed an Application for Review of the decision by the former Cable Services Bureau (the "Bureau") in *Harron Cablevision of Massachusetts* ("Bureau Order").<sup>1</sup> In the *Order*, the Bureau granted the petition for special relief filed by Harron Cablevision of Massachusetts d/b/a Harron Communication Corporation ("Harron") to exclude the communities of Pembroke, Halifax, Plympton, Abington and Rockland, Massachusetts (the "Communities") from the market of WNDS for the purposes of the cable television mandatory broadcast signal carriage requirements. Harron filed an opposition to the Application for Review. For the reasons stated below, we deny the Application for Review.

**II. DISCUSSION**

2. Section 614(h)(1)(C)(i) of the Communications Act authorizes the Commission to add communities to, or delete communities from, a television station's market "to better effectuate the purposes of this section."<sup>2</sup> The Communications Act directs the Commission to consider four statutory market modification factors: (1) historic carriage of the station; (2) station coverage or other local service to the community; (3) carriage of other stations in the community; and (4) evidence of viewing patterns in cable and noncable households within the community.<sup>3</sup> The facts, a detailed description of these market modification provisions and the Commission's related regulations, the arguments of the parties, and a detailed analysis of those matters are set forth in the *Bureau Order* and need not be repeated here.<sup>4</sup>

<sup>1</sup> 12 FCC Rcd 12096 (CSB 1997).

<sup>2</sup> See 47 U.S.C. § 534(h)(1)(C)(i).

<sup>3</sup> See 47 U.S.C. § 534(h)(1)(C)(ii).

<sup>4</sup> At the time the *Bureau Order* was released, Section 76.55(e) of the Commission's rules provided that Arbitron Areas of Dominant Influence (ADIs) be used for purposes of the mandatory carriage rules. That rule was amended (continued....)

3. Contending that the Bureau placed excessive emphasis on the Grade B signal standard, WNDS argues that the Bureau improperly shifted the area in which a station may exercise its must carry rights from the station's economic market to its Grade B contour.<sup>5</sup> Harron states that the *Bureau Order*, consistent with Congress' objective in enacting the market modification provisions of Section 614(h), correctly recognized that the distance between a station and a specific community, or the presence or absence of the station's Grade B contour are relevant factors for assessing whether a station provides local programming coverage to a community.<sup>6</sup> Harron asserts that the Bureau properly relied on the Station's failure to provide Grade B service to any of the Harron Communities in evaluating the modification of WNDS' market.<sup>7</sup> The Commission has held that the local service requirement is satisfied if the station's Grade B contour covers the community.<sup>8</sup> The *Bureau Order* found that WNDS did not deliver a Grade B, or better, signal to any of the Harron Communities, and that the station was not geographically close to the Communities. We find that the *Bureau Order* gave appropriate weight to the failure of WNDS to provide a Grade B signal to the Communities in excluding these unserved communities from WNDS' market.

4. WNDS argues that Harron made no demonstration that other stations carried on the Harron system provide targeted local newscasts and public affairs programming to the Communities.<sup>9</sup> Contrary to WNDS' claims, Harron states that stations on its systems provide community dedicated programming.<sup>10</sup> Because WNDS does not provide evidence indicating its programming covers issues or events specific to the Harron Communities, and Harron demonstrated its carriage of other broadcast programming tailored to the Communities, we find that the *Bureau Order* was correct in concluding that there are a number of other television stations carried by Harron that have a nexus to the Communities and provide local coverage.

5. WNDS argues further that the *Bureau Order* failed to consider the impact of WNDS' prior classification as a "distant signal" on the station's history of cable carriage and viewership levels.<sup>11</sup> Under the historic carriage factor of Section 614, WNDS contends that its previous classification as a "distant signal" negatively affected carriage on Harron's systems.<sup>12</sup> WNDS argues that in *Greater*

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in 1999 to require that commercial broadcast television station markets be defined by Nielsen Media Research's designated market areas ("DMAs"). See 47 C.F.R. § 76.55(e); see also *Definition of Markets for Purposes of the Cable Television Broadcast Signal Carriage Rules*, 14 FCC Rcd 8366 (1999) ("Modification Final Report and Order").

<sup>5</sup> WNDS Application for Review at 3.

<sup>6</sup> Harron Opposition at 4.

<sup>7</sup> *Id.*

<sup>8</sup> *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Carriage Issues*, 8 FCC Rcd 2965, 2977. The Commission has found that the local service requirement is also satisfied if the station "is located close to the community in terms of mileage. *Id.*

<sup>9</sup> WNDS Application for Review at 6.

<sup>10</sup> Harron Opposition at 7.

<sup>11</sup> WNDS Application for Review at 4.

<sup>12</sup> *Id.*

*Worcester Cablevision, Inc.*,<sup>13</sup> (“Greater Worcester”) the Bureau concluded that a station’s past status as a “distant signal” precluded that station from building a record of historic carriage or significant viewership in the relevant cable communities and that this failure did not weigh against the station.<sup>14</sup> WNDS argues that the reasoning applied by the Bureau in *Greater Worcester* with respect to historic carriage patterns and viewership should be controlling in the instant case.<sup>15</sup> Harron asserts that WNDS’ lack of historic carriage and absence of audience share is of evidential significance when linked with other information regarding the market, including lack of Grade B coverage, geographical distance between the Station’s city of license and the Communities, and the absence of noncable audience share in the Communities.<sup>16</sup>

6. We believe the facts of the instant case are distinguishable from those presented in *Greater Worcester*. The significant factor considered in the evaluation process in that case was that the deletion of WNDS from the cable communities served by the cable operator would effectively remove the station from Worcester, Massachusetts, one of the market’s primary population centers.<sup>17</sup> The Bureau concluded that WNDS provided local service because the majority of the cable communities’ population fell within the station’s predicted Grade B contour.<sup>18</sup> The Bureau also concluded that WNDS’ Grade B contour sufficiently encompassed the heavily populated City of Worcester and that WNDS placed a Grade B contour over many of the neighboring communities.<sup>19</sup> Moreover, the cable communities that fell just outside the station’s Grade B contour and the communities within the contour were part of an integrated cable system.<sup>20</sup> In light of these factors and findings, the Bureau in *Greater Worcester* concluded that the cable communities falling just outside of the station’s Grade B contour should not be removed from WNDS’ market.<sup>21</sup>

7. In the instant case, WNDS asks that the Harron Communities be retained in the station’s market. However, the findings at the core of the *Greater Worcester* decision are not present in this case. WNDS fails to provide a Grade B signal to the Harron Communities. In addition, contrary to the facts of *Greater Worcester*, no local service is provided to the relevant communities. Moreover, the cable communities in the *Greater Worcester* case that were located just outside the Grade B contour were part of an inter-related cable system serving Worcester, Massachusetts, one of the primary population centers served by the station. Furthermore, in *Greater Worcester* the station placed a grade B contour over the City of Worcester and was found to provide local service to that community. Consequently, in *Greater Worcester* there was a basis for the finding that the communities in that case were part of the relevant station’s economic market. In this instance, however, no such finding can be made. A station’s

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<sup>13</sup> 10 FCC Rcd 12569 (1995). WNDS was the station at issue in *Greater Worcester*. That proceeding did not involve the communities in the instant proceeding.

<sup>14</sup> WNDS Application for Review at 4-5, citing *Greater Worcester*, 10 FCC Rcd at 12572.

<sup>15</sup> WNDS Application for Review at 5 and 7.

<sup>16</sup> Harron Opposition at 9. The distances between the city of license for WNDS and the Communities are: Rockland - 56 miles; Abington - 57 miles; Pembroke - 62 miles; Halifax - 66 miles; and Plympton - 69 miles.

<sup>17</sup> *Greater Worcester*, 10 FCC Rcd at 12572.

<sup>18</sup> *Id.* at 12572-73.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

assignment to a DMA is intended, according to the legislative history of the 1992 Cable Act, “to insure that the television stations be carried in the areas which they service and which form their economic market.”<sup>22</sup>

8. The DMA market modification process is intended to insure that a station’s economic market is fairly represented by applying the concept of localism set forth in the four statutory factors along with any other relevant information. In this instance, Harron has successfully shown that WNDS’ television market does not include the communities at issue. With respect to historic carriage, WNDS has been in operation since 1983. We believe that WNDS’ failure to be carried for over 17 years reflects the lack of geographic proximity to the subject communities and is not solely attributable to its prior status as a distant signal. Given the circumstances here, including the lack of local service, the failure to place a Grade B signal over the community, as well as, the lack of historical carriage and low viewership, there is a sufficient basis for excluding the Harron Communities from WNDS’ market.

9. Finally, WNDS argues that Harron’s desire to avoid the obligation of carrying WNDS is not sufficient reason for denying WNDS carriage in a portion of the market in which it competes with other Boston market stations.<sup>23</sup> Harron asserts that the substantial distance between WNDS’ city of license and the Communities is the type of situation that warrants the exclusion of a station from certain communities within a station’s designated market.<sup>24</sup> Harron also argues that WNDS has never been able to deliver a viewable signal to the Communities.<sup>25</sup> The *Bureau Order* clearly enumerated the market modification factors and set forth the reasons for WNDS’ failure to meet each criterion. WNDS has failed to demonstrate that such decision was based on an erroneous analysis of the factors that shape its television market. In these respects, the findings and conclusions of the *Bureau Order* are solidly based on the analysis and application of the market modification provisions of Section 614(h). Accordingly, we affirm the conclusion reached in the *Bureau Order* that the requested market modification will effectuate the purposes of the must carry statutory provisions and associated Commission rules.

### III. ORDERING CLAUSES

10. Accordingly, **IT IS ORDERED**, PURSUANT TO Section 1, 4(i), 5(c), 405, and 614(h)(1)(C) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155(c), 405, 534(h)(1)(C), and Section 1.115 of the Commission’s rules, 47 C.F.R. 1.115, that the captioned Application for Review **IS DENIED**.

FEDERAL COMMUNICATION COMMISSION

Marlene H. Dortch  
Secretary

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<sup>22</sup> H.R. Rep. No. 628, 102d Cong., 2d Sess. 97 (1992); See Review of the Commission’s Regulations Governing Television Broadcasting, 14 FCC Rcd 12903, 12926 (1999) (“DMAs are a better measure of actual television viewing patterns, and thus serve as a good measure of the economic marketplace in which broadcasters, program suppliers and advertisers buy and sell their services and products.”)

<sup>23</sup> WNDS Application for Review at 3.

<sup>24</sup> Harron Opposition at 3.

<sup>25</sup> *Id.*